Table of Contents

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions Involved	3
Statement	3
Argument	6
Conclusion	9

Table of Authorities Cited

Cases	Pages
Abington School District v. Schempp (1963) 374 US 203, 212-213, 215	6, 7
Barrows v. Jackson (1953) 346 US 249	6
Cantwell v. Connecticut (1940) 310 US 296	7
Fowler v. Rhode Island (1953) 345 US 67	8
Kreshik v. St. Nicholas Cathedral (1960) 363 US 190, reh. den. 364 US 855	6
Murdock v. Pennsylvania (1943) 319 US 105	7
Reitman v. Mulkey (1967) 18 L.Ed. 2d 831	6
Shelley v. Kraemer (1948) 334 US 1	6
Sherbert v. Verner (1963) 374 US 398	6
Torcaso v. Watkins (1961) 367 US 488	8

Pages

United States v. Ballard (1944) 322 US 78 ..... 6, 8

United States v. Seeger (1965) 380 US 163 6

West Virginia State Board of Education v. Barnette (1943) 319 US 624 8

Constitutions

United States Constitution:
First Amendment 2, 3, 6
Fourteenth Amendment 2, 3

Other

Giannella: Religious Liberty 80 Harvard Law Review (1967) 1381, 1386 7

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1967

No. 1341

In the Matter of the Estate of
DAVID SUPPLE,
also known as David Francis Supple,
Deceased.

TERENCE HALLINAN,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, a corporation sole, et al.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents, as executors and legatees respectively under the will of David Supple, deceased, present this

brief in opposition to the petition for a writ of certiorari on file herein.

OPINION BELOW

The opinion of the District Court of Appeal of the State of California (Appendix of Petition) is reported at 247 Advance California Appellate Reports 410.

JURISDICTION

The First and Fourteenth Amendments to the Constitution of the United States constitute the only basis for jurisdiction by this court as opposed to petitioner's statement (Petition, p 2). No reason exists for granting a writ of certiorari, however, since the sole federal question was decided by the state court in accord with the applicable decisions of this court.

QUESTION PRESENTED

Whether petitioner is precluded by the constitutional guarantees of freedom of religion from using the state judicial process in an attempt to disprove the truth and reasonableness of general religious doctrines and beliefs of the Roman Catholic Church in order to invalidate testamentary dispositions made by a testator, who was motivated by such doctrines and beliefs, for religious, charitable and educational purposes.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States declares:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . . ."

The Fourteenth Amendment to the Constitution of the United States, through which the rights guaranteed by the First Amendment have been made applicable to the states, provides in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

David Supple, the testator, died on August 5, 1960; and, on September 7, 1960, his will and two codicils thereto were admitted to probate by the Superior Court of the State of California for the City and County of San Francisco, and letters testamentary were issued to the respondent executors. The decedent's only heirs were collateral descendants.

The testator, who was a "devout Roman Catholic during his entire lifetime" (as petitioner concedes), by his will and codicils, bequeathed $250. for Masses for the repose of the souls of deceased members of his immediate family and made specific cash gifts: (a) to twenty-one different legatees for various religious, charitable, frater-

nal and educational purposes—mostly to aid the underprivileged and afford educational opportunities; and (b) to nineteen individuals. The testator then—after disposing of his insurance business, forgiving an indebtedness and giving directions for the collection and application of certain notes receivable—left the residue of his estate in varying proportions to six residuary legatees as follows: to the University of San Francisco and the University of Santa Clara for scholarships for deserving students in need of financial assistance; and to The Roman Catholic Archbishop of San Francisco and three religious orders (the Jesuit, Paulist and Maryknoll Fathers) for scholarships for the education of young men studying for the priesthood.

Petitioner, on October 25, 1961, as assignee from an alleged heir of a one-forty-eighth interest in any intestate property of the testator, filed a contest in intervention in the probate proceeding. The petitioner claimed that the probate of the will and codicils should be revoked upon the ground that fraud and undue influence allegedly had been practiced against the testator by the Roman Catholic Church acting through twenty-nine different legatees who are respondents herein. The purported fraud and undue influence, as alleged in petitioner's pleading, was based exclusively upon the contention that the general religious doctrines and beliefs of the Roman Catholic Church concerning the immortality of the soul and eternal life, which the testator had learned as a Roman Catholic during the course of his lifetime, were false and unreasonable, and that all testamentary dispositions by the testator, motivated by such religious doctrines and beliefs, for religious,

charitable, fraternal and educational purposes should be invalidated.

On motion of respondents, the state trial court, after characterizing the purported grounds of contest as "sham" and "an abuse of the judicial process" (Memorandum Opinion, Clerk's Transcript, pp 208-209), entered judgment on the pleadings against petitioner as to his contest in intervention for failure to state facts sufficient to constitute a ground of contest. That court concluded, as the state appellate court pointed out, that "the pleadings in question were fatally defective in that they contained no allegations to the effect that those responsible for such teachings did not, in good faith, believe them to be true, that there was any special or concerted effort designed to influence the testamentary act, or that the testator was taught anything other than the usual teachings of the Roman Catholic Church." (247 Advance California Appellate Reports 410, 414).

The state appellate court, in affirming the judgment, and after noting that the sincerity of respondents was not an issue, held, in accord with the precedents established by this court, that the truth or reasonableness of religious doctrines or beliefs are nonjusticiable issues under the constitutional guarantees of religious freedom. On February 15, 1967, the California Supreme Court denied petitioner a hearing.

ARGUMENT

Constitutional guarantees of religious liberty in the First Amendment, as construed and applied by this court, are applicable through the Due Process Clause of the Fourteenth Amendment so as to preclude any state action amounting to "an establishment of religion" or "prohibiting the free exercise thereof." *Abington School District v. Schempp* (1963) 374 US 203, 215; and *Sherbert v. Verner* (1963) 374 US 398. Such state action encompasses governmental action in any form including state judicial action. *Kreshik v. St. Nicholas Cathedral* (1960) 363 US 190, reh. den. 364 US 855; and see *Shelley v. Kraemer* (1948) 334 US 1 and *Barrows v. Jackson* (1953) 346 US 249; and also see *Reitman v. Mulkey* (1967) 18 Led 2d 831.

Petitioner, in his attempt to invalidate testamentary gifts for the sole reason that the testator was generally influenced or motivated by religious beliefs acquired throughout the course of his lifetime, seeks to use the state judicial process in violation of the constitutional guarantees of religious liberty in three respects.

First: petitioner seeks to prove, as his basic contention, that general religious doctrines and beliefs are untrue and unreasonable. The sincerity of religious belief is not an issue in this case. Clearly, however, judicial examination of the truth or validity of religious doctrines or beliefs, and the justification therefor, is foreclosed by the First Amendment. U. S. Const., Amend. I; *United States v. Ballard* (1944) 322 US 78; and see *Sherbert v. Verner* (1963) 374 US 398, 407, and *United States v. Seeger* (1965) 380 US 163.

Second: petitioner proposes to deny to a testator the right to make testamentary dispositions for religious, charitable, fraternal or educational purposes which have been generally influenced or motivated by religious beliefs or affiliation. Historically, an evil against which the First Amendment was directed was the imposition of civil disabilities because of religious beliefs. Giannella: *Religious Liberty,* 80 Harvard Law Review (1967) 1381, 1386.

Third: petitioner, by claiming that general religious teachings constituted purported fraud and undue influence against the testator for the reason that such teachings allegedly were untrue and unreasonable, seeks to abridge and interfere with the right of respondents to religious freedom.

In construing and applying the constitutional guarantees of religious liberty, this court has recognized the importance of religion in our national life and reaffirmed our commitment as a nation to the principle of religious freedom. See, for example: *Abington School District v. Schempp* (1963) 374 US 203, 212-213. Specifically, in construing and applying the free exercise clause of the First Amendment, this court has safeguarded the right to practice religion—including the right to worship, to preach and teach and solicit funds and to use public places for such purposes—and the right to be free from any governmental (federal or state, including judicial) discrimination or encroachment, direct or indirect, which would inhibit or deter, without compelling reason, the free exercise of religion. See, for example: *Cantwell v. Connecticut* (1940) 310 US 296; *Murdock v. Pennsylvania*

(1943) 319 US 105; *West Virginia State Board of Education v. Barnette* (1943) 319 US 624; *United States v. Ballard* (1944) 322 US 78; *Fowler v. Rhode Island* (1953) 345 US 67; *Torcaso v. Watkins* (1961) 367 US 488; and *Sherbert v. Verner* (1963) 374 US 398.

Since the religious issues presented by petitioner's pleading were nonjusticiable under the constitutional guarantees, and since petitioner had wholly failed to plead facts sufficient to constitute any grounds for a will contest under applicable state law, the state appellate court properly affirmed the judgment entered against petitioner for the reason that his pleading was fatally defective.

Further, in opposition to this petition for certiorari, it is noted that petitioner has failed to serve notification upon these respondents, in compliance with Rule 21(2), concerning the date when the petition and certified transcript of record were filed, the docket number of the case, and the contents of the certified transcript of record.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Dated: June 30, 1967.

Respectfully submitted,

JOHN F. DUFF
Attorney for Respondent The Roman Catholic Archbishop of San Francisco a (California) corporation sole

EMMETT LUCEY
BARRETT, LUCEY & HARKLEROAD
Attorneys for Joseph M. Cummins and Frank D. Chisholm, as Executors of the Will of David F. Supple, Deceased

NOEL J. DYER
PILLSBURY, MADISON & SUTRO
Attorneys for Respondent University of San Francisco

CHARLES P. KNIGHTS
Attorney for Respondent Jesuit Seminary Association

WILKIE C. COURTER
Attorney for Respondents Most Reverend T. J. Toolen, Bishop of Mobile, an (Alabama) corporation sole; Sisters of the Presentation of the Blessed Virgin Mary; The Catholic Church Extension Society of the United States of America; the Missionary Society of St. Paul the Apostle in the State of New York; Fathers of St. Edmund, Southern Missions Inc.; Benedictine Fathers; Monastery of the Precious Blood, Passionist Fathers Missions; Father Flanagan's Boys' Home; Poor Clares of Los Altos; The Servite Fathers, South Carolina Oratory; Most Holy Trinity Fathers; Fathers of Our Lady of Mercy; Immaculate Conception Indian Mission School; Society of the Divine Savior; Holy Rosary Indian Mission; The Society for the Propagation of the Faith; Reverend Donald Lynch of Missionary Servants of the Most Holy Trinity